Supreme Court, U.S.
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Case Number:

IN THE

SUPREME COURT OF THE UNITED STATES

KRISHNA REDDY,

Plaintiff-Petitioner,

vs.

VESTA M. MATTHEWS;
MARC D. MATTHEWS;
CIMARRON ESCROW, INC.;
JUDY DREW; and
DOES 1-25, inclusive,

Defendants-Respondents.

After Decisions By
The Court of Appeal of California
Fourth Appellate District, Division Two
Case No.: E045855;
and
California Supreme Court
Case No.: S166253

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

This case presents the following questions for review:

1. Whether procedural irregularities by the Court of Appeal in disposing the first appeal in the case in which I was subsequently named a "vexatious litigant" resulted in the order that is being appealed from that is in conflict with the Court of Appeal's prior decision in that case and would continue to do so unless the Court reviews the decision of the Court of Appeal;

2. Whether the Court of Appeal unfairly denied me a right to appeal from that vexatious litigant order because the appeal would open review of a clearly erroneous vexatious litigant order which is to the advantage of the Court of Appeal;

3. Whether the Court of Appeal lacked jurisdiction to hear the matters because of disqualification of the Justices of the Second Division of the Fourth Appellate District from hearing any matters in this case as they were parties to a lawsuit filed regarding the events surrounding the vexatious litigant order; and

4. Whether the trial court judge was disqualified from hearing any matters in this case as he was the counsel for the judges in related cases.

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2. Order denying petition for rehearing
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PETITION FOR WRIT OF CERTIORARI

I, Krishna Reddy, plaintiff-petitioner in pro se, am respectfully petitioning the Court for a writ of certiorari following the decisions of the California Court of Appeal, Fourth Appellate District, Division Two, denying me the right to appeal from the adverse judgments by the trial court.

STATEMENT OF THE BASIS FOR JURISDICTION

Dates opinions filed:

On July 15, 2008, in an unpublished opinion, the California Court of Appeal denied me leave to file a Notice of Appeal from the adverse judgments of the trial court [see Attachment I]. On August 8, 2008, in an unpublished opinion, my petition for rehearing was denied by the Court of Appeal [see Attachment II]. A request by me for publication of the opinion of the Court of Appeal was not ruled upon by the Court of Appeal. On October 1, 2008, my petition for Review was denied by the California Supreme Court [see Attachment III].

Statutory basis for review:

Jurisdiction of this Court is being invoked under 28 USC Section 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Prefiling order:

1. I am a woman of East Indian origin. After graduating from my medical school in India, I moved to the United States. I was employed as a medical transcriptionist at a local hospital in Southern California, Redlands Community Hospital("RCH"), in April of 1990.

2. My co-workers at RCH harassed me based on their perception that I am "not an American." Please see the document under "Request for Judicial Notice"("RJN") which was filed in the California Supreme Court, Exhibit A at page 5 lines 21-27, the declaration of a co-worker, Lynda Elliott, in which she acknowledged that she told me to "go back to India." In the case of *Gafoor v. INS*, 231 F.3d 645, 651-652 (9th Cir. 2000), when the exact statement of "go back to India" was made, the Ninth Circuit found discrimination pursuant to 42 USC Section 1981 based on protected grounds of race and imputed political opinion. When that harassment by my co-workers was complained to the administration at RCH, RCH terminated my employment.

3. I hired the attorneys of a local law firm to file a lawsuit against RCH, and they filed a complaint against RCH. Though their fee was paid in full, they demanded more money and eventually substituted out of the case.

4. The case against RCH continued and depositions of the defendants were taken by their attorneys in violation of the Discovery Statutes of California by not giving me any notice of taking of

those depositions, and those depositions were taken to manufacture evidence against me in this case with their false statements [see Exhibit A page 5 lines 1-20], and I was not given an opportunity to cross-examine those employees. Those depositions were used by RCH to make its attorneys give perjured testimony in their declarations in the State Court proceedings to obtain a summary judgment against me [see Exhibit B at page 8, lines 6-8, separate statement by Ms. Greene, wherein she stated, "there is no evidence of any discriminatory action against Ms. Reddy", though she had the statement by Ms. Lynda Elliott that Ms. Elliott told me to "go back to India", in her possession at the time. See RJN, Exhibit A at page 5 lines 21-26].

5. I had to hire a second law firm to represent me in that case. A summary judgment was granted against me in that case and in favor of RCH based on the perjured testimony of the RCH defendants and their attorneys.

6. I then substituted myself pro per in that case. I obtained copies of the depositions that were taken by the attorneys of RCH, and based on those, I filed a motion for reconsideration of the summary judgment granted to RCH. Prior to the hearing of the motion for reconsideration, I disqualified the trial court, Judge Wilde, "for cause", based on a derogatory statement that she made about me, but Judge Wilde did not recuse herself from the case, but continued with the case in violation of California's Code of Civil Procedure Sections 170 et. seq. She then set aside the extrinsic and intrinsic fraud of RCH in obtaining summary judgment that I complained about, stated that "that was not why we were there", refused to find fact that I was discriminated based on my race and National

origin though there was evidence on the record and which I had pointed out to her in open court by mentioning Ms. Lynda Elliott's statement [see Exhibit A at page 5 lines 21-28]. She then denied my motion for reconsideration and ordered the defendants to prepare a proposed judgment [see Exhibit C at page 9, tentative ruling by Judge Wilde]. I filed a Statement of Disqualification for cause of Judge Wilde on February 21, 1995 [see Exhibit D at page 10]. A proposed judgment was not served on me by RCH until the 23rd of February, 1995 [see Exhibit E at page 11]. Judge Wilde did not file a timely answer to my statement of disqualification, and thus got automatically disqualified out of the case [see *Hollingsworth v. Superior Court* (1987) 191 Cal App 3d 22, 26]. Once that issue of her automatic disqualification was pointed out to Judge Wilde, Judge Wilde, who wrote about me, "Plaintiff simply does not agree with the law, but this court is bound by the law, regardless of whether plaintiff likes that or not!" [see Exhibit C at page 9], backdated that proposed judgment submitted by RCH to the Court around February 23, 1995, to February 21st, 1995, in an attempt to undo the statements of disqualification that I filed against her and retain the jurisdiction over the case. In the case of *Wenger v. Commission on Judicial Performance,* (1981) 29 Cal 3d 615, 644-645, the California Supreme Court found misconduct on the part of the judge who "backdated" documents. However, that backdated judgment was in fact, an interlocutory judgment, as there were issues left to be decided [see Exhibit F at page 12], which also made my statement of disqualification of Judge Wilde timely [see Exhibit D at page 10]. However, Judge Wilde who

was confused between a "peremptory disqualification" and "disqualification for cause", did not timely strike my statement of disqualification or file a verified answer, but ruled on her own disqualification in violation of the disqualification statutes [see Exhibit G at page 13, minute order from 3/1/1995]. Judge Wilde then ordered the employees of the San Bernardino Superior Court not to take anything from me for filing but to "throw it in the trash" [see Exhibit H at page 14, documentation by Deputy Court Clerk, Ms. Sharon Prentiss]. The appropriate pleadings and motions I filed were all denied without a hearing by Judge Wilde and Judge John P. Wade. I filed a timely notice of appeal.

7. Since the statute of limitations was running out on the claims for post-termination injunctions issued by RCH and its employees against me, and since the fraud of the RCH defendants in obtaining summary judgment against me that was complained by me to Judge Wilde was not adjudicated but was set aside by Judge Wilde, and since Judge Wilde issued orders to the Court Clerk not to take anything from me for filing, I had to file a second case against RCH and its employees for violation of civil rights and others, State Superior Court case number SCV 22373. This time, RCH sought the protection of California's Civil Code Section "47(b)(2)", which is in fact a statutory exception to the statutory privilege, and stipulated to their perjury in the State Court proceedings in obtaining summary judgment against me in the first case SCV 06542. However, instead of entering a judgment in my favor, that case was dismissed by Judge John P. Wade, without leave to amend.

8. On appeal in the two State Court cases against RCH and its employees, SCV 06542 and SCV 22373, though I served my opening brief timely on the defendants and the California Supreme Court, I could not file that opening brief with the Court of Appeal because of an order that I received from the Court ordering me to file an opposition to RCH's motion to dismiss. Once I explained the same to the Court of Appeal, the Court ruled in the appeal from SCV 22373, that I did show good cause as to why I did not file the briefs by the time that the brief was due in the first case, SCV 06542. Subsequently, the first case on appeal was dismissed because of mootness, as the subsequent pleadings and the Court's findings in the second case made moot the summary judgment of the first case [see Exhibit I at pages 15-18 and see Exhibit J at page 19]. However, the State Court of Appeal did not order the SUPERIOR COURT to reverse its judgment, though cited relevant chapters from the Text Book, Witkin, which cited cases that recommended reversal of a moot judgment.

9. In the case of *Duke Power Co. v. Greenwood County, S.C.*, 299 U.S. 259, 267-268 (1936), which had presented similar irregularities in practice by the courts as the trial and appellate courts in my case, this Court held that the proper procedure in case of mootness was to reverse the judgment below.

10. In the case of *United States v. Munsingwear* (1950) 340 U.S. 36, 39-41, this Court ruled that the proper procedure when the appellate court did not practice the proper procedure, was for the appellant to file a motion to vacate the judgment below when that judgment became moot on appeal.

11. The California Supreme Court in the case of *Turner v. Markham* (1909) 156 Cal. 68, 69 also said that the judgment that has been rendered moot on appeal by another judgment must be reversed by the trial court.

12. RCH did not file a timely appeal from that order though was represented by one of the authors of CBE, Mr. David Axelrad, in that appeal. RCH slept on its rights, and that decision of the Court of Appeals that the appeal became moot because of the pleadings and Court findings in the other case against RCH, became final, and is currently the "law of the case", and must be followed in all subsequent actions against RCH.

13. Once the appellate court refused to hear the appeal from the Summary Judgment against RCH because of "mootness", since the summary judgment has been reversed, and under the doctrine of "stare decisis", I was required to file a motion to vacate the summary judgment in the trial court, I filed for motion to vacate the judgment and enter a different judgment in the Superior Court case, SCV 06542, which came on for hearing by Judge Jerome Stevenson on October 29th, 1996. RCH filed a belated opposition which it did not bother to serve on me in a timely manner, which I received a day prior to the hearing. During the Court proceedings that day, Judge Jerome Stevenson, though I had asked for a continuance of the hearing as the opposition was not served by the defendants five Court days before the hearing as required under State law, denied any extension of the hearing, refused to recuse himself after my statement of disqualification in open court though he is required to pursuant to the State statutes, Civil Code Sections 170 et seq., asked me to

"shut up", and threatened me that he would "put me in the jail if I did not listen to him and if I opened my mouth", told me what had happened that day of February 16, 1995, in that very Court room, though he was not even there on February 16, 1995, told me that I disqualified Judge Wilde pursuant to CCP 170.6 when in fact I disqualified Judge Wilde for cause [see Exhibit D at page 10], and told me that I was not allowed to do so after a summary judgment was granted, though under California law, I was allowed to [see *Bambula v. Superior Court* (1985) 174 Cal App 3d 653, 657 - held that a peremptory disqualification of the judge was possible even after summary judgment]. He rendered a ruling naming me a vexatious litigant after his disqualification in violation of the State statutes, Civil Code Sections 170 et seq., and sanctioned me [see Exhibit K at pages 20-25, Reporter's Transcript of the proceedings]. A peremptory disqualification was filed by me against Judge Stevenson that same day, and Judge Stevenson "cancelled" the original document filed, and instead, the copy served on him was filed as the original document of peremptory disqualification [see Exhibit L at pages 26-27]. No response was filed by Judge Stevenson to my Statement of Disqualification, who automatically got disqualified himself from this case. Based on the "findings" of the disqualified judge, Judge Stanley W. Hodge, signed an order naming me a vexatious litigant [see Exhibit M at pages 28-30]. In the case of *Armstrong v. Picquelle* (1984) 157 Cal App 3d 122, the Court held that the presiding judge could not sign a judgment based on the tentative ruling of a retired judge. Therefore, Judge Hodge's order based on the tentative ruling of a disqualified judge, Judge

Stevenson, violates the law, making that vexatious litigant order void on its face.

14. When I filed an appeal from that prefiling order in 1996, though the Presiding Justice of the Court of Appeal granted me permission to proceed with the appeal on four different occasions, and that opinion once again was the "Law of the Case" since it was not appealed by RCH, in an unpublished opinion, the Associate Justices of the Court dismissed that appeal from Superior Court case SCV 06542, by first affirming the vexatious litigant order in violation of the Law of the Case Doctrine and dismissed the appeal for not obtaining permission from the "Superior Court" though I had obtained permission from the presiding justice. Once again, that ruling in the second appeal in that case by the Court of Appeal was in violation of "Law of the Case" doctrine, not to mention, Judge Stevenson, who issued that sua sponte prefiling order against me, did not place any restrictions on my right to appeal, but in fact ruled sua sponte that I could file "any kind of appeal I want" [see Exhibit K at page 25, lines 21-22].

Current case:

1. Defendant Marc Matthews' actions have been described as "very unethical" and "unlawful" by another litigant whom Mr. Marc Matthews had sued in the Superior Court over a property in Victorville, case of *Matthews v. Silveira*, case number VCVVS 024069 [see Exhibit N at page 31].

2. Around December of 2004, I was looking for a property in Spring Valley Lake of Victorville with a view of the lake and within my price range, with an

intent to occupy the property as soon as the construction of the home was complete. Though the market value of the subject property was only $132,000, I was willing to pay $195,000 for it. In the first week of March 2005, around 03/03/2005, defendant Marc Matthews and I entered into a bilateral oral agreement regarding the sale/purchase of their lot, i.e., the subject property, lot No. 165 in Track No. 8103, for $195,000, with a $5,000 nonrefundable deposit, and to close the escrow in 60 days with a construction loan that I was going to take which was going to finance the purchase of the vacant lot. The sale was contingent on me obtaining the necessary financing. Since I was forgoing other lake view properties that were within my price range, I specifically asked defendant Marc Matthews to execute a written agreement regarding the sale of the property, and Marc Matthews, who is a developer and has experience in conducting real estate transactions, and who is fully aware of the statute of frauds, said, "you have my word for it", but would not give that in writing.

3. At the recommendations of my mortgage company, I called defendant Judy Drew, an escrow officer at defendant Cimarron Escrow, Inc., to open the escrow, and I specifically asked her if she had any forms for a written agreement for the sale of the land, and Judy Drew told me that "a written contract was not necessary to open the escrow."

4. On March 15, 2005, Marc Matthews and I met at defendant Cimarron Escrow's place of business in Victorville, California, and met with defendant Judy Drew. Marc Matthews deposited a copy of the Grant Deed with Judy Drew and thus opened the escrow (see Exhibit O at page 32), and I deposited the nonrefundable deposit for $5,000 into the escrow by

giving the check to Marc Matthews who assured me that he would deposit that check in the escrow on March 17, 2005. The escrow instructions regarding the agreed terms of sale were given to Judy Drew by both Marc Matthews and myself.

5. Judy Drew did not print out the escrow instructions while we were there in her office or have them executed on March 15, 2005, but took down the escrow instructions like a stenographer. The Escrow company then sent out the escrow instructions for the parties to sign (see Exhibit P at page 33). Marc Matthews did not deposit my check into escrow on March 17, 2005, but a day later, on March 18, 2005, Marc Matthews wrote me a signed letter with the names of both the defendants Vesta Matthews and Marc Matthews printed on the stationary of Matthew Builders (a copy of which is attached as Exhibit Q at page 34) in which he acknowledged the existence of the contract we have for the sale of the property by referring to the contract as "deal" and using the phrase "close a deal" to refer to the closing of escrow that we subsequently opened, and wrote a memorandum memorializing the contract after the fact by referring to the terms of the contract with phrases such as "60 days", "construction loan", "purchase of our lot", "for you to perform", "purchase price", etc. In that letter, he also executed an options agreement seeking "more money." Marc Matthews then allegedly told Judy Drew that he wanted "more money" for the lot and refused to sign the escrow instructions. On March 25, 2005, within five days of receipt of Marc Matthews' letter, I notified Marc Mathews by leaving a message on his answering machine that I could close the escrow as scheduled and would not stipulate to any modification

to the terms of the sale. When I tried to explain to Marc Matthews that we had a valid contract that is enforceable, he said, "shut up and take me to Court", and he told me that the property was "not for sale" though he had the "for sale" sign posted on the property. Mr. Matthews later listed that land property for $250,000. He reportedly entered into an agreement with another buyer to sell that property around June/July of 2005, and that property later reportedly fell out of escrow.

PROCEDURAL HISTORY

1. In this current case, I complied with the prefiling order and hired my former attorney, Mr. Alderson, to file this action on my behalf. However, after filing the complaint, Mr. Alderson did not bother to file any other pleading in this case, but took off on vacation to return only after the due date to file pleadings on my behalf had expired in this case. At that point, I filed my original application to the trial court to allow me to substitute myself in pro per. No ruling was issued on that application.

2. Judge Sachs, in his capacity as Chief Deputy County Counsel, represented the defendants in the Federal Court cases that I filed which were based on the facts surrounding the illegal prefiling order issued against me in case SCV 06542. Judge Sachs repeatedly filed motions in those cases to declare me a vexatious litigant [see Exhibit R at pages 35-38; Motion by Judge Sachs as Chief Deputy County Counsel], thus was disqualified from hearing any matters in this case. During open court proceedings in this case, Judge Sachs said that once he "inherited" my case in this action, he had my complaint dismissed because of the [outdated] "vexatious litigant" order. At that point in time, the Presiding Judge of the Superior Court, Judge Larry Allen, interpreted the prefiling order as "only applicable to complaints filed in pro per", and Judge Allen allowed for the action to proceed (see Exhibit S at page 39). In fact, Judge Stevenson lifted any restrictions on appeals by saying, "You may file any kind of an appeal you want" (see ExhibitK O at page 25 lines 21-22). No appeal was filed by any of the defendants from that order by the Judge Allen in this case from 8/3/2007, and

that order became final (see Exhibit S at page 39).

3. I then renewed my application to proceed pro se in this action and requested the Superior Court to allow me to file all the necessary documents in this action including a NOTICE OF APPEAL [see Exhibit T at pages 40-43]. My application was granted and I was allowed to substitute in pro per [see Exhibit U at page 45, lines 2-5]. No appeal was filed by any of the defendants to that ruling by the Superior Court.

4. During the course of this case, in response to my first amended complaint, the Matthews defendants filed a demurrer, which was overruled by the Court and the defendants were given 30 days to respond to my Complaint. In response to my First Amended Complaint, the Escrow defendants filed a motion for an order against me for security. In spite of adverse rulings against the Matthews defendants, the Matthews defendants now filed a belated joinder with the Escrow defendants.

5. During the preparation of my opposition to the motion for security, I noticed that Judge Sachs was the same Chief Deputy County Counsel who used to repeatedly file motions to name me a vexatious litigant in the Federal Court cases. Once I realized who he was, I filed written and oral statements of disqualification of Judge Sachs, but Judge Sachs refused to recuse himself, ruled on his own disqualification in violation of the disqualification statutes, complained that I "disqualified him in spite of favorable rulings", and granted the defendants' motions for security at $10,000 for each defendant, for a total of $40,000, though only one law office was representing each pair of defendants. However, no written order was made by Judge Sachs ordering me to post any security. The case was then

reassigned to Judge Larry Allen, who dismissed my complaint on motion of the defendants for my inability to post the security.

6. Though I had obtained permission to file a Notice of Appeal in this case from the Superior Court (see Exhibit U at page 45, lines 2-5), I applied for permission from the Administrative Chief Justice of the Court of Appeal to proceed with this appeal. Since the Judicial Council form MC-701 is for use only in the Superior Court and since there were no similar appellate forms available, I followed the format of the form MC-701 in my application for permission filed in this Court on 5/30/2008. No opposition was filed by any of the defendants to my application. The application was not acted upon by the Administrative Presiding Justice for the multi-division Court of Appeal, The Honorable Justice Judith McConnell, but was decided by the Presiding Justice of the Second Division of the Fourth Appellate District, The Honorable Justice Manuel A. Ramirez, though Justice Ramirez was disqualified to hear any matters in this case as he was party to a federal case which was based on the events surrounding the illegal vexatious litigant order.

7. On my Petition for Rehearing to the Administrative Presiding Justice, once again, Justice Ramirez, in violation of the "Law of the Case" doctrine, took judicial notice of the second opinion of the Court of Appeal instead of the first opinion that was filed by the Court of Appeal in the case SCV 06542.

8. I requested the Court of Appeal to order publication of the orders of the Court denying me right to file a Notice of Appeal, but the Court did not rule on my application.

9. On October 1, 2008, the California Supreme Court denied my petition for review.

ARGUMENT

I

THE COURT OF APPEAL DENIED ME MY CONSTITUTIONAL RIGHTS GUARANTEED BY THE EQUAL PROTECTION CLAUSE WHEN IT DENIED ME THE RIGHT TO APPEAL

1. California's Code of Civil Procedure section 904.1, gives me a right to appeal any adverse judgments in this action.

2. In the case of *Moy v. U.S.* (9th Cir. 1990) 906 F2d 467, 469, the Ninth Circuit Court of Appeals ruled that a prefiling order affects a litigant's rights, and thus gives a right to appeal.

3. In the case of *Lindsey v. Normet* (1972) 405 U.S. 56, 77, this Court said that when an appeal is afforded, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause.

4. In the case of *In re Bittaker* (1997) 55 Cal App 4th 1004, 1008, the Court said that petitioner could contest the validity of the prior order declaring him a vexatious litigant and imposing the prefiling order and could seek review of that nonappealable order in conjunction with a subsequent appealable order. I raised the issue of the legality of that order in the trial court, but the trial court did not address that issue. It is clear from the above that the prefiling order against me was illegal since I was the prevailing party in the case of SCV 06542, the case against RCH; therefore, the prefiling order cannot be enforced [see *Freeborn v.*

Smith (1864) 69 U.S. 160, 175 (Wall) - held that there is no "vested right" in a wrong judgment].

Based on the above, the Court of Appeal by denying me the right to appeal based on the fact that the appeal is going to open a clearly erroneous and biased illegal vexatious litigant order against me, violated my Constitutional right to access to Justice and access to Courts.

II

JUSTICE RAMIREZ LACKED JURISDICTION TO HEAR MY APPLICATION FOR LEAVE TO APPEAL

1. Though no restrictions were placed on my right to appeal by Judge Stevenson, I applied for leave to appeal, but my application was not decided by the Administrative Presiding Justice of the Fourth Appellate District. In the case of *McColm v. Westwood Park Assn.* (1998) 62 Cal App 4th 1211, 1220, the Court ruled that the administrative presiding justice of a multidivision appellate court is an appropriate recipient of the application because the appellant/petitioner is required to seek permission at the outset, before an appeal or writ petition is filed and a division is assigned. The Administrative Presiding Justice of the Fourth Appellate District is the Honorable Justice Judith McConnell, and is the proper Court who should have ruled on my application for leave to appeal.

2. The Second Division of the Fourth Appellate District is disqualified from hearing any matters in this case, as the Court of Appeal and its Justices were defendants in a federal court case that was filed by me

based on the events surrounding the issuance of a prefiling order against me. In that federal court case, Judge Sachs in his capacity as Chief Deputy County Counsel, representing the judges, filed pleadings to name me a vexatious litigant (see Exhibit R at pages 35-37). Therefore, both Judge Sachs and the Appellate Justices have personal knowledge of the disputed evidentiary facts surrounding the vexatious litigant order which became an issue in this case, and were disqualified from hearing any matters in this case. Since Judge Sachs ruled on motion for security in this action though was precluded from hearing any matters in this case as stated above, recusal of the Justices of the Court of Appeal was required [see *Zaremberg v. Superior Court* (Shelley) 2004 115 Cal App 4th 111, 114 · writ review was transferred out of the district where petitioner's counsel had previously served as justice with justices who otherwise would have heard the case].

III

THE COURT OF APPEAL DID NOT FOLLOW THE PRECEDENTS IN DECIDING ON MY APPLICATION FOR LEAVE TO APPEAL

In the case of *McColm v. Westwood Park Assn.* (1998) 62 Cal App 4th, 1211, 1217, the Court ruled that the decision whether to allow the litigant to proceed will be made on an individual basis, taking into account such factors as the nature of the action below, the nature of the lower court's ruling, whether writ petition or appeal is the appropriate procedure for seeking review in the Court of Appeal, the litigant's claims of

error and whether the litigant has demonstrated improper reasons for bringing the original litigation or for taking it to the next court level. However, the Court of Appeal did not address the merits of my case, but denied me my right to appeal because that appeal would open up the previous issues regarding the vexatious litigant order issued illegally against me.

IV

LAW OF THE CASE DOCTRINE PRECLUDES REVIEW OF THE SECOND DECISION OF THE COURT OF APPEAL IN THE CASE SCV 06542

1. As stated above, the Court of Appeal's opinion that the summary judgment was moot reversed the summary judgment in the case SCV 06542, and I was entitled to a motion to vacate the summary judgment. However, when I followed the recommended policy in such moot appeals, I was named a vexatious litigant. That illegal vexatious litigant order was affirmed by the Court of Appeal on the second appeal in that case in violation of the "Law of the Case" doctrine.

2. The text "Eisenberg, Horvitz & Wiener, CAL. PRAC. GUIDE: CIVIL APPEALS & WRITS (The Rutter Group 2006)", at Sections 14:171-173, at page 14-60 and 14-61, regarding Doctrine of "Law of the Case" reads as follows:

> Under the doctrine of "law of the case", any ruling in an appellate court opinion that is "necessary" to the court's decision must be followed in all subsequent

proceedings in the action, whether in the trial court or on a later appeal. [*Morohoshi v. Pacific Home* (2004) 34 C4th 482, 491, 20 CR3d 890, 895-896; *Clemente v. State of Calif.* (1985) 40 C3d 202, 211-212; 219 Cal Rptr 445, 450.] (emphasis added)

The same limitation ordinarily binds the California Supreme Court when it considers a second appeal after a decision has been rendered by a court of appeal. "Where a decision upon appeal has been rendered by a District Court of Appeal and the case is returned upon a reversal, and a second appeal comes to this court directly or intermediately, for reasons of policy and convenience, *the court generally will not inquire into the merits of said first decision, but will regard it as the law of the case".* [*Searle v. Allstate Life Ins. Co.* (1985) 38 Cal 3d 425, 434; 212 Cal Rptr 466, 471-472 (internal quotes omitted); see also *Morohoshi v. Pacific Home,* supra, 34C4th at 491, 20 CR3d at 896-doctrine applies to supreme court "even though this court may conclude the previous Court of Appeal decision was erroneous"] (emphasis added)

3. As stated above, The Rutter Group, supra, (2006) at Section 14:192 at page 14-70 reads:

Supreme Court decisions: A supreme court decision must be followed by all

> California courts-meaning all intermediate courts of appeal, as well as the superior courts. [*Auto Equity Sales, Inc. v. Super.CT.* (1962) 57 C2d 450, 455, 20 CR 321, 323-324; see *Cloud v. Northrop Grumman Corp.* (1998) 67 CA4th 995, 1010, 79 CR2d 544, 554 (citing text); *Jeld-Wen, Inc. v. Super.Ct. (Keener)* (2005) 131 CA4th 853, 868, 32 CR3d 351, 361-"*an appellate court may not properly disregard Supreme Court authority in favor of a lower court ruling that it prefers*"]. (emphasis added)

Based on the above, the Court of Appeal failed to follow the "Law of the Case" doctrine, and took judicial notice of the wrong unpublished order by the Court of Appeal filed on 12/14/1999 instead of taking judicial notice of the order of Court of Appeal filed on 9/16/1996, which became "Law of the Case" in that case.

V

THE PREFILING ORDER IS OUTDATED AND CANNOT BE ENFORCED

The statutory limitation on the validity of a prefiling order is seven years only [see *Stolz v. Bank of America* (1993) 15 Cal App 4th 217, 223-225], after which it expires. There is no reason why such orders should be enforced after they expire, since the attorneys and courts can always renew such motions and renew such orders after the statutory period of 7 years in case

a litigant is filing meritless pleadings. Therefore, the illegal vexatious litigant order that was issued against me by a disqualified judge in a case in which I was the prevailing party, is also an outdated order by now as it was issued more than 11 years ago.

VI

I WAS THE PREVAILING PARTY IN THE CASE AGAINST RCH

1. The test for determining the "prevailing party" status rests on the extent to which a party achieved its litigation objective. In the case against RCH, because the summary judgment became moot based on the findings of the Superior Court in the second case against RCH which went unappealed by RCH [see Exhibit I at page 16, lines 16-25], and became final now, I am the prevailing party in both State Court cases against RCH though both the trial court and the Court of Appeal refuse to acknowledge that [see *Santisas v. Goodin* (1998) 17 C4th 599, 622; and *Damian v. Tamondong* (1998) 65 Cal App 4th 1115, 1124-1125].

2. The Court of Appeal on 8/8/2008 cited Witkin's Section 654 only, though the dismissal based on mootness filed on 9/16/1996 cited Section 521 from the 3rd edition of Witkin from 1985, "Issues Determined by Other Judgment" which is now Section 646 at page 675 in 9 Witkin, Cal. Procedure (4th Ed. 1997) Appeal.

3. When issues were determined by the other case, the proper procedure set forth by the court in the case of *Turner v. Markham* (1909) 156 C. 68, 69, cited by Witkins, supra, was motion in the trial court to vacate the order appealed from.

4. As mentioned above, in the case of *Duke Power Co. v. Greenwood County, S.C.,* supra, 299 U.S. 259, 267-268 (1936), which had presented similar irregularities in practice as by the trial and appellate Courts as in my case, the Supreme Court held that the proper procedure in case of mootness was to reverse the judgment below. The Court wrote:

> *This case presents irregularities in practice, which we think should not be overlooked...We thus have a situation in which both courts below have failed to act in accordance with the standards of proper procedure.* Where it appears upon appeal that the controversy has become entirely moot, it is the duty of the appellate court to set aside the decree below and to remand the cause with directions to dismiss...If it appears that supervening facts require a retrial in the light of a changed situation, the appropriate action of the appellate court is to vacate the decree which has been entered and revest the court below with jurisdiction of the cause to the end that issues may be properly framed and the retrial had. See Gulf, C. & S.F.R. Co. v. Dennis, 224 U.S. 503, 507; 509 S.; 32 S. Ct. 542; Watts, Watts & Co. Unione Austriaca, 248 U.S. 9, 21; 22 S.; 39 S. Ct. 1, 3 A.L.R. 323; Dorchy v. Kansas, 264 U.S. 286, 289; 291 S.; 44 S.Ct. 323, 324, 325; Patterson v. Alabama, 294 U.S. 600, 607; 55 S. Ct 575, 578. (emphasis added)

When I cited this case to the Court of Appeal, the Court said that my argument was "frivolous" on 8/8/2008.

5. In the case of *United States v. Munsingwear, supra* (1950) 340 U.S. 36, 39-41, the United States Supreme Court ruled that the proper procedure would have been for the appellant to file a motion to vacate the judgment below when that judgment became moot on appeal. Unfortunately, when I followed the above case law, I was deemed a vexatious litigant by the trial court in the case against RCH.

6. The California Supreme Court in the case of *Turner v. Markham, supra* (1909) 156 Cal. 68, 69 also said that the judgment that has been rendered moot on appeal by another judgment must be reversed by the trial court. In that case, this Court wrote:

> "...But since the present appeal was taken we have, in *Turner v. Markham*, 155 Cal. 562, [102 Pac. 562], reversed the judgment upon which the execution and the proceedings supplementary to execution were founded....The order being still unexecuted, *it is the duty of the superior court upon reversal of the judgment to set it aside.* And this would be so, even if the order had been affirmed prior to the reversal of the main judgment....The disposition of the appeal is, therefore, a matter of indifference to the parties. An affirmance will neither benefit the respondent nor harm the appellant. A reversal will add nothing to the security of the appellant, who can obtain complete

relief by a mere request to the court below to vacate the order appealed from." (emphasis added)

7. As I said above, RCH did not file a timely appeal from that order though was represented by one of the authors of CEB, Mr. David Axelrad, in that appeal. RCH slept on its rights, and that decision of the Court of Appeals that the appeal became moot because of the pleadings and Court findings in the other case against RCH, became final now, and is currently the "law of the case", and must be followed in all subsequent actions.

8. At Section 14:173 at page 14-61, the Rutter Group, supra (2006) cites the case of *Joyce v. Simi Valley Unified School Dist.* (2003) 110 CA4th 292, 304, 1 CR3d 712, 722, and quotes the following text: "Litigants are not free to continually reinvent their position on legal issues that have been resolved against them by an appellate court" (internal quotes omitted).

Based on the above, the proper order that the Court of Appeal should have taken judicial notice of was the order from 9/16/1996 (see Exhibit J at page 19).

VII

THE APPEAL HAS MERIT AND I SHOULD BE ALLOWED TO PROCEED WITH THE APPEAL

1. None of the issues in this case is an "issue of first impression", but the issues in this action have all been already settled by the higher courts of this State, and the doctrine of "stare decisis" would apply to the

issues in this case. Unfortunately, the trial court did not follow the higher courts' precedents when deciding some of the issues in this case. The issue of "statute of frauds" raised by the Matthews defendants in this case, has already been resolved and the law settled by both the California Appellate Court [see *In re Balfour & Garrette, supra,* (1910) 14 Cal App 261, 265-267] and the United States Supreme Court [see *Beckwith v. Talbot* (1877) 95 U.S. 289, 291-292], where both Courts ruled that a memorandum after the fact, in writing, signed by the defendant, admitting the making of the oral agreement, just as the Matthews defendants have done with their letter dated March 18, 2005 [see Exhibit V at page 53], relieved the transaction from the operation of the statute of frauds. In the cases of *Kahn v. Lischner* (1954) 128 Cal App 2d 480 and *Rogers v. Davis* (1994) 28 Cal App 4th 1215, the Courts found bad faith when the sellers refused to close the escrow because they wanted "more money." In fact, in this case, the demurrer of the Matthews defendants was overruled by the Court, stating that there the contract regarding the sale of the property could be enforced. As to the Escrow defendants in this case, the California courts have already ruled that liability could be imposed for negligence of the Escrow officers and their unauthorized practice of law which contributed to the opportunistic sellers to cancel the escrow [see *McKay v. Longsworth* (1989) 211 Cal App 3d 1592, 1595-1597; and *Bruckman v. Parliament Escrow Corp.* (1987) 190 Cal App 3d 1051, 1061]. In fact, the Escrow defendants through their judicial admissions, already conceded that defendant Judy Drew was negligent and has indulged in unauthorized practice of law which resulted in the opportunistic seller to cancel the escrow. Therefore,

there was no showing by any of the defendants that I would not prevail in this action [see *Muller v. Tanner* (1969) 2 Cal App 3d 445, 464 - held that there was no evidence to sustain a finding that there was no reasonable probability that the plaintiff would prevail in the litigation and that dismissal was improper].

2. In the case of *In re Bittaker, supra* (1997) 55 Cal App 4th 1004, 1008, the Court said that petitioner could contest the validity of the prior order declaring him a vexatious litigant and imposing the prefiling order and could seek review of that nonappealable order in conjunction with a subsequent appealable order. I raised the issue of the legality of that order in the trial court, but the trial court did not address that issue. It is clear from the above that the prefiling order against me was illegal since I was the prevailing party in the case of SCV 06542, the case against RCH; therefore, the prefiling order cannot be enforced [see *Freeborn v. Smith* (1864) 69 U.S. 160, 175 (Wall) - held that there is no "vested right" in a wrong judgment].

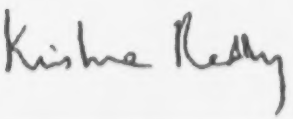
Based on all the above, the appeal has merit, and I should be allowed to proceed with the appeal.

CONCLUSION

For all the reasons stated above, I respectfully request the Court to kindly grant me this petition for a writ of certiorari.

Respectfully submitted,

Date: March 4, 2009



Krishna Reddy
Plaintiff-Petitioner, pro se

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

FILED JUL 15 2008
COURT OF APPEAL
FOURTH DISTRICT

KRISHNA REDDY,
Plaintiff and Appellant,

v.

VESTA M. MATTHEWS et al.,
Defendants and Respondents.

E045855
(Super.Ct.No.
VCVVS045512)

The County of San
Bernardino

THE COURT

Appellant's application filed May 30, 2008, for permission to file a notice of appeal is DENIED. Appellant has failed to carry his burden to show that the proposed appeal has merit. Appellant fails to inform the court about the facts of the case and the laws controlling the case. (Code Civ. Proc. § 391.7, subd. (b).)

Presiding Justice

cc: See attached list

Exhibit I

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

FILED AUG -8 2008
COURT OF APPEAL
FOURTH DISTRICT

KRISHNA REDDY,
Plaintiff and Appellant,

v.

VESTA M. MATTHEWS et al.,
Defendants and Respondents.

E045855
(Super.Ct.No.
VCVVS045512)

The County of San
Bernardino

THE COURT

The court DEEMS appellant's petition for rehearing filed July 30, 2008, to be a motion to vacate the order of this court filed July 15, 2008, denying appellant's application filed May 30, 2008, for permission to file an appeal, and DENIES the deemed motion.

Krishna Reddy's superior court case was dismissed for failure to furnish security for the benefit of the defendants. She appeals contending that the order declaring her a vexatious litigant

(Code Civ. Proc., § 391.7) was erroneous, a contention she is entitled to make in appealing the dismissal of her case pursuant to the vexatious litigant order. (See *In re Bittaker* (1997) 55 Cal.App.4th 1004, 1008 [vexatious litigant order not appealable, but reviewable on appeal from subsequent order]; 3 Witkin, Cal. Procedure (4th ed. 1997) Actions, § 342, p 437, ¶ (4) and case cited.)

However, the court TAKES JUDICIAL NOTICE of its opinion filed December 14, 1999, in case No. E019415, (using the copy attached to this order) in which it upheld the vexatious litigant order made by Superior Court Judge Jerome Stevenson on October 29, 1996, the same order appellant again attempts to challenge. (See Opn., pp. 5-8; Application filed May 30, 2008, p. 2, ¶ 1 ["issued a prefiling order against me in the year 1996"]; Pet., p. 7, Exh. 0, p. 44 [Rep. Trans. Oct. 29, 1996].) This holding is, of course, the law of the case. (See *Morohoshi v. Pac Home* (2004) 34 Cal.4th 482, 491.)

Furthermore, the court notes the frivolous character of appellant's contention. Appellant contends that she was the prevailing party in *Reddy v. Redlands Community Hospital*, superior court case No. SCV06542 (Pet. p. 14), even though summary judgment was granted against her (Pet., Exh. K, p. 35) because she actually prevailed in the appeal (E016189), even though her appeal was dismissed for failure to timely file an appellant's opening brief and because she said, "that the 'appeal also has been rendered moot by the subsequent pleadings and Court's findings in the second case on appeal.. . ."

(Pet., Exh. N, p. 38). She argues that this court should have reversed the summary judgment she appealed citing the well known rule that, when the mootness of the *entire underlying action* appears during an appeal, the judgment appealed should be reversed with the direction to dismiss the underlying action. (See Pet., p. 6, and case cited; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 654, p. 690.) However, that rule does not apply when *just the appeal* is moot, which was what appellant said had occurred.

The court concludes that the appeal appellant proposes to file is frivolous, and that denial of the application for permission to file an appeal was justified.

RAMIREZ

_____

Presiding Justice

cc: See attached list

SUPREME COURT
FILED OCT 1 - 2008

Frederick K. Ohlrich Clerk

Deputy

Court of Appeal, Fourth Appellate District, Div. 2 -
No. E045855
S166253

IN THE SUPREME COURT OF CALIFORNIA
En Banc

KRISHNA REDDY, Plaintiff and Appellant,
V.
VESTA M. MATTH et al.., Defendants and Respondents.

The request for judicial notice is denied.
The petition for review is denied.

Kennard, J., was absent and did not participate.

GEORGE

Chief Justice

Exhibit III